IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1526 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNION OF INDIA - Appellant(s)
Versus
SILVER COTTON MILLS CO LTD - Defendant(s)

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Appearance :
MR Jitendra Malkan for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 21/07/2006

ORAL JUDGMENT

Present appeal has been filed by the appellant original-defendant challenging the judgment and decree dated 3.3.1984 passed by the learned Judge, City Civil Court at Ahmedabad in

partly decreeing the Civil Suit No. 185 of 1982 and directing the appellant original-defendant to pay Rs. 10,000 deposited by the plaintiff with the appellant herein original-defendant vide Chalan No. 795 dated 12th August 1949. The defendant herein original-plaintiff, who was a Public Limited Company registered under the Companies Act, 1956, manufacturing cotton fabrics had executed B-II Bond as required under the Central Excise Rules for a sum of Rs. 10,000 and the said amount was deposited by the plaintiff under Chalan No. 795 dated 12th August 1949. All throughout upto 1976 the defendant's officers went on issuing certificate at the end of every year showing that the said amount is lying deposited with the Government of India. By letter dated 23rd January 1978 the plaintiff requested for certification of the year 1977 and it was replied by letter dated 8.2.1978 that the said amount has already been returned to the plaintiff and to the other Mills on 16.11.1959

and 28.12.1959. Again, by letter dated 19.1.1979, the plaintiff requested for such a certificate for the year ended 1978 and as no reply was given reminders were sent on 17.2.1979, 18th March 1979 and 11th April 1979. The Chief Accounts Officer (Revenue) by Telegram dated 11.4.1979 informed the plaintiff that the matter is under correspondence. On 13.4.1979, the plaintiff requested for a certificate, and by letter dated 17.4.1979 he was informed by the Chief Accounts Officer (Revenue) that it appears from the Treasury record that the amount of Rs. 10,000 was paid to the party between the period from November 1959 to December 1959. The plaintiff requested the Chief Accounts Officer (Revenue) to produce the signature showing the receipt of the same. Thereafter, after many reminders and correspondence neither the receipt was shown nor amount of Rs. 10,000 was refunded and therefore the plaintiff filed the aforesaid suit.

2. The Suit was resisted by the defendant and Written Statement at Exh. 8 was filed. It was contended that the Suit was barred by limitation and the Civil Court had no jurisdiction to entertain the suit. It was also submitted that the Chief Accounts Officer, Central Excise, (Revenue), Vadodara, by his letter dated 31.7.1980 informed the plaintiff that the amount was already paid as per the bill passed on 21.12.1959. It was also submitted that from the Lapsed Deposit Account Register of Baroda Treasury the entire amount of Rs. 1,30,000 has been paid in cash to the respective parties. It was further submitted in the Written Statement that the Chief Accounts Officer, Central Excise (Revenue), Vadodara by his letter dated 15.4.1981 informed the plaintiff that the Treasury Officer, Baroda intimated to his department that payment had already been made to the plaintiff and if the plaintiff feels that they have not received the payment, then plaintiff may bring the No Payment

Certificate from the Treasury Officer, Vadodara so that further action can be taken. It was also submitted that as the plaintiff failed to produce No Payment Certificate from Vadodara Treasury Officer no cause of action survives against the defendant and therefore it was requested to dismiss the Suit with costs. The Trial Court framed the Issues at Exh.10.

3. From the defendant side, the defendant produced at Exh.76 a letter from the Accountant General to the Assistant Chief Accounts Officer; Exh.77 showing the particulars of the deposits whereat, at Sl. No. 11 the name of the plaintiff was shown that the said sum of Rs. 10,000 had been paid on 21.12.1959. The defendant also produced at Exh. 86 the notice dated 12th July 1980 served by the plaintiff to the defendant; Exh.87 the letter of the Chief Accounts Officer dated 31.7.1980 to the plaintiff's Advocate in reply to Exh. 86 declaring their inability to

issue Certificate of Security Deposit of Rs. 10,000, and the Treasury Officer, Vadodara has informed the Central Excise Office that the same has been paid over to plaintiff on 21.12.1959. The Superintendent of Central Excise Department was examined vide Exh. 73 and the Treasury Officer, Vadodara vide Exh.94. Considering the oral as well as documentary evidences, the learned trial Court held that the plaintiff has proved that the amount of Rs. 10,000 was deposited by aforesaid Chalan; that there is no evidence that the said amount has been refunded to the plaintiff more particularly when upto 1976-77 certificates were issued to the plaintiff to show that amount is lying as deposit with the Government of India; and ultimately passed the decree for an amount of Rs. 10,000/-. The learned Trial Court also held that the suit was within the period of limitation and/or the same is not barred by limitation. Being aggrieved and dissatisfied with the same, the appellant has

preferred the present First Appeal.

4. The learned counsel appearing on behalf of the appellant has vehemently submitted that when the plaintiff has failed to prove any No Payment Certificate from the Vadodara Office the learned trial Court has materially erred in decreeing the suit for an amount of Rs. 10,000/-. It is further submitted that the suit was barred by limitation and that the Civil Court had no jurisdiction to pass such a decree. It was submitted that initially the amount was transmitted to Miscellaneous Fund and thereafter the said amount has been paid to various other persons like the plaintiff who had deposited the amount earlier.

5. I have gone through the judgment and order passed by the learned trial Court and the oral as well as documentary evidence from the Record and Proceedings. It is not in dispute

that the amount was deposited by the plaintiff, vide Chalan No.795 dated 12th August 1949 and that upto 1976-77 the plaintiff was issued the certificate every year that the said amount is lying with the Government of India as deposit. Dispute started for the first time in the year 1978 when it was stated that the amount was already paid in 1959. No documentary evidence has been produced to show that in fact the amount of Rs. 10,000 was refunded by the department to the plaintiff. In absence of any such documentary evidence the Trial Court is justified in ordering refund of Rs. 10,000 deposited by the plaintiff. The learned trial Court has also rightly held that the suit was not barred by limitation and as the amount was not refunded the suit for refund is maintainable.

6. The contention on behalf of the appellant that as the plaintiff has failed to produce No Payment Certificate from the Vadodara Office the

plaintiff was not entitled to the relief. It is required to be noted that in fact it is the defendant-appellant who was submitting that the amount has been paid and therefore it is the duty of the appellant to prove by cogent evidence that the amount was refunded. In absence of the same, the learned Trial Court has rightly passed the decree in favour of the defendant for the amount of Rs. 10,000. No illegality has been committed by the Trial Court. The judgment and order passed by the learned Trial Court is not contrary to the evidence.

7. For the reasons stated above, the Appeal fails and is dismissed. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.